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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 185

ALLEN M. SNYDER,

Petitioner,

vs.

THE PROVIDENT TRUST CO., SUCCESSOR TO THE COMMONWEALTH TRUST CO., GUARDIAN OF THE ESTATE OF MILLARD P. SNYDER, A WEAK-MINDED PERSON.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

NORMAN J. GRIFFIN,
WM. S. FENERTY,
Counsel for Petitioner.

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THE PROVIDENT TRUST CO., SUCCESSOR TO THE COMMONWEALTH TRUST CO., GUARDIAN OF THE ESTATE OF MILLARD P. SNYDER, A WEAK-MINDED PERSON.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Allen M. Snyder, the petitioner, by his attorneys, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, affirming a judgment of Common Pleas Court No. 1 of Philadelphia County in favor of the respondent, entered upon a judgment in its favor by the auditing judge.

Jurisdiction.

The decision of the Supreme Court of Pennsylvania was filed on March 22, 1943. A petition for a re-hearing was

filed on April 1, 1943 and denied on April 13th, 1943. The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. Section 344). The time for filing a petition for a writ of certiorari was extended, by order of the court, until July 23, 1943.

Statement of Facts.

This case arose on appeal from a decree of Common Pleas Court No. 1, of Philadelphia County, confirming the account of the Provident Trust Company, successor to the court-appointed trustee, the Commonwealth Trust Company, guardian of the estate of Millard P. Snyder, a weak-minded person; said guardian, or trustee, having been appointed July 19, 1920. Twenty-two years after its appointment, *i. e.,* on May 19, 1942, the fiduciary filed its first and only account. To this the petitioner filed exceptions (R. 90-92).

The questions here persented, *inter alia,* relate to:

Losses to the trust estate sustained by reason of many mortgage investments made by the fiduciary of a weak-minded war veteran without permission of the court and in disregard of the terms of an Act of Assembly of the State of Pennsylvania, regulating the duties of the guardian of a weak-minded person, to wit, the Act of June 13, 1836, P. L. 589, Sec. 34. The question involved is included in the exceptions to the account presented to the auditing judge (R. 90-92); and is also included in the assignments of error presented on appeal to the Supreme Court of Pennsylvania (R. 207-215).

An adjudication by the Supreme Court of Pennsylvania, which is contrary to an antecedent construction of the aforesaid Act of Assembly, to wit, *Commonwealth* v. *McConnell,* 226 Pa. 24. This antecedent construction had been acquiesced in for a great many years prior to the appointment by the court, upon application of the petitioner, of a trustee

for his brother, the weak-minded veteran. The question involved was presented to the Supreme Court of Pennsylvania at the argument of the appeal (R. 203); and again in the petition for re-argument filed with the same court (R. 288). The petitioner believes that, in these proceedings, the repudiation by the Supreme Court of Pennsylvania of its former adjudication in *Commonwealth* v. *McConnell, supra*, violates the decree of your Honorable Court in *Douglas* v. *Pike*, 101 U. S. 607, 25 L. Ed. 968.

The judicial construction of the World War Veterans' Act of July 7, 1924, and its amendments, especially with respect to the question of credits claimed by the fiduciary as "spending money" to the weak-minded person. The question invloved was presented to the auditing judge, at the time of the audit. He maliciously caused it to be omitted from the record, as recited in the petition for the amendment thereof filed with the Supreme Court of Pennsylvania (R. 263-277). The question involved was again presented to the Appellate Court by the assignments of error which were filed in connection with the appeal (R. 216-217). In permitting the fiduciary in these proceedings to credit itself with "spending money" for the veteran, the petitioner believes that the Supreme Court of Pennsylvania has violated the decree of your Honorable Court in *Reynolds* vs. *United States*, 292 U. S. 443;

The question of the irregularities practiced by the auditing judge, as a consequence of which the petitioner was denied an orderly hearing, by the court en banc, of the issues involved in these proceedings. This misconduct was immediately brought to the attention of the Appellate Court (R. 263-277). It gave no reason for its failure to investigate the charges which were supported by affidavit (R. 274). The matter was again presented to the appellate court in the assignments of error filed in connection with the appeal (R. 210-211). The ruling of the Supreme Court of Penn-

sylvania upon the issue will be found in the record at page 282-283. The petitioner believes that the Fifth Amendment to the Constitution of the United States requires that he be given notice and an opportunity to be heard whenever his rights are involved in a judicial proceeding. Your Honorable Court has so decreed on very many occasions, for example: *Ochoa* vs. *Morales,* 230 U. S. 139; *Coe* vs. *Armour Fertilizer Works,* 237 U. S. 413; *Powell* vs. *Alabama,* 286 U. S. 45 and *Baltimore and Ohio Ry. Co.* vs. *United States,* 298 U. S. 349;

The question of the irregularities practiced by the examiner, upon the basis of whose report the auditing judge confirmed the account of the fiduciary (R. 196). (The report itself will be found at page 93). A detailed statement of the irregularities practiced by the examiner will be found in the Petition to Strike his Report from the Record (R. 168-171). This matter was immediately brought to the attention of the Appellate Court (R. 263-277), and was again presented to the Supreme Court of Pennsylvania in the assignments of error filed in connection with the appeal (R. 211). The findings of the examiner were binding upon the petitioner, Davidson's Estate, 324 Pa. 90; but, like the auditing judge, the examiner did not consider it necessary to conduct a hearing and a copy of his report was not received by the petitioner until after the entry of the final judgment. The adjudication of the Supreme Court of Pennsylvania, with respect to the report of the examiner, will be found at page 283 of the record. For reasons heretofore advanced the petitioner believes this was in violation of the Fifth Amendment to the Constitution of the United States; and

The final question relates to credits claimed by the fiduciary for repairs alleged to have been made to properties acquired by the foreclosure of the mortgage investments to which reference has heretofore been made. The question as to propriety of these charges was presented to the

auditing judge at the time of the audit (R. 90-92). No evidence was presented by the fiduciary to establish that the work was performed, or that the charges were fair just and reasonable. This burden was upon the fiduciary. Hart's Estate, 203 Pa. 480. Again, the question was presented to the auditing judge in the Requests for Findings of Fact and Conclusions of Law (R. 176). As hereinbefore mentioned, he entered a "final judgment" without answering any of these requests. The Petitioner presented the issue to the Supreme Court of Pennsylvania in the Statement of the Question Involved (R. 203), and in the Assignments of Error filed in connection with the appeal (R. 216). The adjudication with respect to the credits claimed for repair work will be found at page 286 of the Record.

Ignoring its former adjudication in Hart's Estate, supra, and the fundamental principles of Law applicable to the subject matter, the appellate court relieved the fiduciary of the burden of proving its claim and held that, since the Petitioner had failed to prove that the work had not been done, awarded the full amount to the fiduciary upon the mere presentation of its claim. These repair items were substantial and out of proportion to the value of the properties as will appear from an examination of the Record at page 261.

The rights and obligations of the trust estate should be determined by the law and the evidence and not left to the arbitrary discretion of an auditing judge. The petitioner believes that the capricious action of the court in ignoring its former adjudication and the fundamental principles of law has deprived the estate of the equal protection which is guaranteed by the Fourteenth Amendment to the Constitution of the United States as interpreted by your Honorable Court in *Louisville R. R. Co.* vs. *Stock Yards Co.*, 212 U. S. 132-144.

The questions herein presented are important because it is an admitted fact that the same fiduciary, whose account is now before the court is managing, or mismanaging, more than three hundred other estates of weak-minded veterans (R. 124). Many of these are being audited by the same judge before whom the present case was heard. The next of kin are not represented by counsel, no questions are asked, and the accounts are being automatically confirmed (R. 240). Current events render it extremely probable that the unfortunate victim in the present case will shortly be joined by many others in like circumstances. Again and again it has been said that weak-minded persons are peculiarly the "wards of the court." For this reason, it would be inexpedient at this time to encourage the courts to relax their vigilance. These states should not be made a convenient outlet for worthless mortgages. Had the fiduciary in the present case obeyed the Act of Assembly and the adjudication of the court in *Commonwealth* vs. *McConnell, supra*, the character of the investment would have been discovered and the loss avoided.

The questions presented arise both under the Constitution and the Laws of the United States and they are respectfully submitted for the consideration of your Honorable Court.

Principal Question Presented.

1. Where a State Statute provides that it shall be lawful for the trustee of a weak-minded person to invest the trust funds "in such stocks or upon such security as shall be approved by the court": Should the trustee be surcharged for losses resulting from mortgage investments secured upon real estate but made without permission of the court?

2. Where the judicial construction of an Act of a State Assembly, requiring that the trustee of a weak-minded person must obtain permission of the court before investing

the trust funds in a mortgage secured upon real estate, has been acquiesced in for thirty-three years: Should such judicial construction be subject to retroactive modification so as to impair rights acquired under it?

3. Where, after twenty-two years, the trustee for a weak-minded War Veteran files its first account: Should it then be permitted to credit itself with spending money alleged to have been distributed out of the pension of the veteran under the provisions of the World War Act of 1924, without the permission of the court and in the absence of any testimony to indicate such expenditures were either reasonable or necessary?

4. Where an auditing judge wilfully omits portions of the record of the testimony taken before him, and these omissions were immediately brought to his attention and that of the Appellate Court, which refused, without a hearing, to make an investigation of the subject matter of the complaint: Should a litigant, under these circumstances, be deprived of his right to be heard upon the issues involved in the omitted portions of the record?

5. Where it is charged that an examiner appointed by the court has flagrantly disregarded the rules applicable to his office: Should the court without a hearing upon the complaint be permitted to approve the examiner's report?

6. Where the record indicates that an auditing judge ignored requests for findings of fact and conclusions of law, which had been presented to him, entered final judgment without a hearing before the court en banc and two months later falsely represents to the appellate court that there was such a hearing: Should the appellate court of the State be permitted to confirm the fictititous findings of the court en banc?

7. Where, under the fundamental principles of Law and the former adjudications of the court, the burden of proof is upon a fiduciary to establish that credits, claimed in its account for repair items to trust properties, are correct just and reasonable: Should the court be permitted to ignore the law, capriciously shift the burden of proof and exercise its own discretion as to the allowance of these credits claimed by the fiduciary?

Specifications of Error.

1. The Supreme Court of Pennsylvania erred in affirming and holding that, under the terms of the Act of Assembly, the trustee is not required to obtain permission from the court before investing the funds of the weak-minded veteran in a mortgage secured upon real estate.

2. The Supreme Court of Pennsylvania erred when it retroactively modified its former judicial construction of the Act of Assembly and thereby impaired rights which had been acquired under it.

3. The Supreme Court of Pennsylvania erred in affirming and holding that the trustee, after neglecting to file an account for twenty-two years, should be permitted, under the provisions of the World War Act of 1924, to credit itself with spending money alleged to have been distributed out of the pension of the veteran without permission of the court and without any testimony to indicate such expenditures were either reasonable or necessary.

4. The Supreme Court of Pennsylvania erred in refusing the petitioner a hearing upon his complaint which charged that an auditing judge and his court stenographer had wilfully omitted parts of the record so as to forestall an examination of the issues involved.

5. The Supreme Court of Pennsylvania erred in refusing the petitioner a hearing upon his complaint which charged

that an examiner appointed by the auditing judge had flagrantly disregarded the rules of court applicable to his office.

6. The Supreme Court of Pennsylvania erred in permitting the auditing judge to cover up his misconduct by falsely representing that there had been a formal hearing before the court en banc and then affirming fictitious findings alleged to have been made by the court en banc.

7. The Supreme Court of Pennsylvania erred in ignoring the fundamental principles of law and its former adjudications, capriciously shifting the burden of proof, and exercising its own discretion as to the allowance of credits claimed by the fiduciary.

Reasons for Allowance of the Writ.

1. Where an Act of Assembly has been judicially construed, such construction, accepted and acquiesced in for many years, is as much a part of the instrument as if it had been written into it at its origin.

2. The new construction of this Act of Assembly should not be made retroactive so as to impair rights which had been acquired under the former construction.

3. The adjudication of a Federal question should not be forestalled by the capricious omission of parts of the record by the court to which the evidence is presented.

4. The Supreme Court of Pennsylvania should not have permitted the lower court to totally ignore the fundamental rules of law and equity in the audit of the account of the weak-minded Veteran.

5. The uncorrected result of the instant case would be a denial of the protection, under due process of law, of the property, not only of the weak-minded person here, but of

all unfortunates in similar circumstances who are peculiarly the wards of the court.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of Pennsylvania, commanding said court to certify and send to this court a full and complete transcript of the record and the proceedings of the Supreme Court of Pennsylvania numbered and entitled on its docket, January Term, 1942, No. 251, Re: Estate of Millard P. Snyder (Weak-minded) Appeal of Allen M. Snyder to the end that this cause may be reviewed and determined by this court, as provided by the Statutes of the United States; and, that the judgment of said Supreme Court of Pennsylvania be reversed by this court; and, for such further relief as this court may deem proper.

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